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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

JEREMY OLSEN.

Plaintiff,

V.

XAVIER BECERRA, in his official capacity as Secretary of the United States Department of Health and Human Services,

Defendant.

No. 2:21-CV-00326-SMJ

RESPONSE TO PLAINTIFF'S STATUS REPORT RE: PAYMENT OF OTHER CLAIMS

In accordance with the Court's March 21, 2022 Order (ECF No. 34), Defendant

Xavier Becerra, in his official capacity as Secretary of the United States Department of Health and Human Services, (“Defendant”), through counsel, submits the following response to Plaintiff’s filing at ECF No. 35. This response is supported by the Declaration of Karen Grasso (“Grasso Decl.”) and the Declaration of John T. Drake (“Drake Decl.”), filed herewith.

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1 I. PROCEDURAL HISTORY

2 On March 1, 2022, Plaintiff made the following assertion in a reply brief filed
3 in support of his pending preliminary injunction motion: “At the time of this filing,
4 Plaintiff . . . has additional claims that are in the appeal process that are rejected based
5 on CMS 1682-R.” ECF No. 22 at 10. Defendant responded to that assertion in a sur-
6 reply brief filed on March 12, 2022. ECF No. 27. Thereafter, on March 21, 2022, the
7 Court entered an order directing Plaintiff to substantiate his assertion that “additional
8 claims” were being rejected. ECF No. 34. The Court’s instruction to Plaintiff was to
9 “submit a status report detailing all pending claims that have not been paid.” ECF No.
10 34.

11 Plaintiff responded to the Court’s order on March 22, 2022. ECF No. 35.
12 Plaintiff’s response identifies two claims: (1) a claim for reimbursement of a 90-day
13 supply of continuous glucose monitor (“CGM”) sensors furnished to Plaintiff on
14 October 13, 2021 (the “**October 2021 claim**”)¹ and (2) a claim for reimbursement of a
15 90-day supply of CGM sensors furnished to Plaintiff on January 24, 2022 (the
16 “**January 2022 claim**”). ECF No. 35.

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20 ¹ Plaintiff previously identified this as an “additional claim” in his reply brief.
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22 Defendant addressed this claim at length in his sur-reply. ECF No. 27 at 4-5.
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II. RESPONSE

A. October 2021 Claim

The October 2021 claim has been paid. The claim was paid by Noridian on December 27, 2021. Grasso Decl. ¶ 6. Payment was issued under claim number 21288839976002. *Id.* This was a new iteration of the claim number that Noridian created after it erroneously denied the claim under a prior iteration, 21288839976001. *Id.* Payment of this claim is confirmed by a remittance notice that Noridian issued to MiniMed Distribution Corp. (“MiniMed”), on December 30, 2021. Grasso Decl. ¶ 7 & Exhibit A. The remittance notice reflects that the October 2021 claim was paid under claim number 21288839976002. *Id.*

Further confirming that this claim has been paid is a Medicare Summary Notice (“MSN”) addressed to Plaintiff dated January 21, 2022. Drake Decl. Exhibit A. This MSN shows that the October 2021 claim (date of service October 13, 2021) was paid under claim number 21288839976002. *Id.* This MSN post-dates and supersedes the MSN dated November 10, 2021, that is appended to Plaintiff’s status report. ECF No. 35-1.

The November 10, 2021 MSN was issued before Noridian corrected its erroneous denial of this claim. Grasso Decl. ¶ 8. The January 21, 2022 MSN, which shows that the October 2021 claim was paid under claim number 21288839976002, reflects the current (and final) status of this claim. The January 21, 2022 MSN also refutes Plaintiff's assertion that he "received no communication from the Secretary"

1 indicating that the October 2021 claim had been paid. ECF No. 35 at 1.

2 The additional documents Plaintiff appended to his status report have no
3 bearing on the status of this claim. The redetermination decision dated January 6,
4 2022 (ECF No. 35-2) was issued 10 days after Noridian paid the claim on December
5 27, 2021. Grasso Decl. ¶ 9. The person who issued this decision on January 6 did not
6 realize the claim had originally been denied in error, and that Noridian had corrected
7 the error and issued payment. *Id.* Had that person known the claim had been denied
8 in error and that payment had been issued, the appeal would have been dismissed. *Id.*
9 The letter from Maximus Federal dated March 1, 2022 (ECF No. 35-3) is simply an
10 acknowledgement that Plaintiff filed a request for reconsideration of Noridian's
11 January 6 redetermination decision.

12 The fact that the January 6 redetermination decision purports to deny coverage
13 does not mean that Plaintiff is responsible for paying the October 2021 claim. Grasso
14 Decl. ¶ 11. In fact, Plaintiff's appeal of that decision to Maximus Federal has since
15 been dismissed because the claim has been paid. *Id.*

16 Plaintiff does not seriously dispute that the October 2021 claim has been paid.
17 To the contrary, Plaintiff acknowledges that he was able to confirm through "the
18 Secretary's website" that this claim has, in fact, been paid. *See* ECF No. 35 at 1 ("the
19 Secretary's website indicates" the October 2021 claim has been paid). Defendant
20 assumes that this reference to "the Secretary's website" is to the online claim status
21 portal at Medicare.gov, which allows Medicare participants to view the status of
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1 reimbursement claims.² Given that Plaintiff chose not to provide a printout or screen
2 shot of the information he obtained from the “website,” however, Defendant can only
3 speculate about what website Plaintiff is referring to.³

4 The evidence unequivocally establishes that the October 2021 claim has been
5 paid. The Court should disregard any suggestion that this claim was or continues to
6 be denied at the administrative appeal level pursuant to CMS 1682-R. The Court
7 should likewise disregard Plaintiff’s claim that he “must keep appealing” in order to
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9 ² The URL for the claim status portal is <https://www.medicare.gov/account/login/>.

10 This portal allows Medicare participants to “check the status of Medicare Part A
11 (Hospital Insurance) or Medicare Part B (Medical Insurance) claims” by creating a
12 username and password and logging into their account. See “Claims & Appeals,
13 Check the Status of a Claim,” available at: [https://www.medicare.gov/claims-
14 appeals/check-the-status-of-a-claim](https://www.medicare.gov/claims-appeals/check-the-status-of-a-claim) (last visited March 22, 2022).

15 ³ If Plaintiff is indeed referring to the online claim status portal at Medicare.gov, there
16 is reason to believe that Plaintiff could have quickly and easily determined that the
17 two claims at issue in this case—the April 2019 and March 2021 claims—were paid
18 back in July 2021, months before this lawsuit and the instant preliminary injunction
19 motion were filed. There is also reason to believe that Plaintiff knew, or should have
20 known, that his allegations of continued bad faith by the Secretary and the Secretary’s
21 counsel are completely meritless.

1 avoid being liable for payment. ECF No. 35 at 3. That claim is factually inaccurate
2 for the reasons addressed above, and is further foreclosed by the Secretary's recent
3 issuance of TDL-220257. *See* ECF No. 20-1 (TDL directing MACs like Noridian to
4 provide coverage for this type of CGM claim, even if claim is in the administrative
5 appeal process).

7 B. January 2022 Claim

9 The January 2022 claim has been paid. The claim was paid by Noridian on
10 February 2, 2022. Grasso Decl. ¶ 12. Payment was issued under claim number
11 22027829096000. *Id.* Payment of this claim is confirmed by a remittance record
12 dated February 10, 2022, which shows that the claim was paid under claim number
13 22027829096000. Grasso Decl. ¶ 13 & Exhibit C.

15 Payment of this claim is also reflected in an MSN addressed to Plaintiff dated
16 February 18, 2022. Drake Decl., Exhibit B. This MSN shows that the January 2022
17 claim was paid under claim number 22027829096000. *Id.* This MSN directly
18 contradicts Plaintiff's assertion that he "has received no communication from the
19 Secretary approving or rejecting this claim." ECF No. 35 at 2. The MSN clearly
20 reflects that the claim was allowed.

23 As with the October 2021 claim, Plaintiff acknowledges that he was able to
24 confirm through "the Secretary's website" that this claim was paid. *See* ECF No. 35
25 at 2 ("the Secretary's website indicates it [the January 2022 claim] has been paid").
26 Given that Plaintiff was able to confirm through the "website" that this claim has been
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paid, and given that this claim has never been the subject of an administrative appeal,
it is unclear why Plaintiff is talking about it in response to an order directing him to
“detail[] all pending claims that have not been paid.” ECF No. 34. In any event, the
claim has been paid, and it has no bearing on the instant preliminary injunction motion
or any other aspect of this case.

DATED this 24th day of March, 2022.

Vanessa R. Waldref
United States Attorney

s/John T. Drake
Brian M. Donovan
John T. Drake
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2022, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

NAME & ADDRESS	Method of Delivery
Roger Townsend BRESKIN JOHNSON TOWNSEND 1000 Second Ave., Suite 3670 Seattle, WA 98104	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____
James Pistorino PARRISH LAW OFFICES 788 Washington Road Pittsburgh, PA 15228	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____

s/John T. Drake
John T. Drake